

TTAB



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

09-12-2002

U.S. Patent & TMO/c/TM Mail Rpt Dt. #71

In the Matter of Trademark Registration No. 2,397,364
For the mark: MRS. CALIFORNIA
Registration Date: October 24, 2000

SHELLY ANN MADSEN and ERIC DAVID
MADSEN, d/b/a MRS. CALIFORNIA
INTERNATIONAL,

Petitioners

v.

KALL-MED, INC.

Registrant

Petition for Cancellation

BOX TTAB – FEE

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

PETITION FOR CANCELLATION

Petitioners, Shelly Ann Madsen and Eric David Madsen, doing business as MRS. CALIFORNIA INTERNATIONAL, located and doing business at 1523 E. Maplegrove Street, West Covina, CA 91792, believe they will be damaged by Registration No. 2397364 as it relates to services in Classes 41, namely, “local, State and National beauty pageants for married women” and hereby petition to cancel the same.

As grounds of this petition, it is alleged that:

1. On October 24, 2000, the Registrant obtained Registration No. 2,397,364 for services in International Class 41, based upon Section 2(f) of the Lanham Act for “Local, State and National Beauty Pageants for married women,” and for goods, in International Class 14, namely “Custom jewelry using a crown design,” as for each, respectively, claiming a date of first use for the services and goods of April 8, 1994.

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Petitioners have Senior Use of the Term MRS. CALIFORNIA as used in connection with beauty pageants featuring married women in California.

2. Well prior to the Registrant's claimed date of first use of the MRS. CALIFORNIA mark recited in Registration No. 2,397,364, and since at least as early as October 31, 1985, Petitioners, and their predecessor-in-interest, have continuously used the marks MRS. CALIFORNIA and MRS. CALIFORNIA INTERNATIONAL in connection with beauty pageants which feature and showcase the talents of married women. Petitioners' use of the marks therefore substantially predates the cited Registrant's claimed date of first use of April 8, 1994.
3. Petitioners are the owners of the registered domain names www.mrscalifornia.com, www.mrscalifornia.info, www.mrscalifornia.biz, among others, and have incurred substantial expenditures in connection with the registration, promotion and use of such domain names and corresponding websites, as well as use of the trademark "MRS. CALIFORNIA" as used by Petitioners in connection with the promotion and provision of beauty pageants featuring married women. Both before and subsequent to the cited trademark registration, petitioners have used the MRS. CALIFORNIA mark and have expended considerable sums in developing and promoting their own services offered in connection with the MRS. CALIFORNIA mark, including registration fees for the domain name, purchase of stationery with the domain name and trademark on it, advertisement of and promotion of the MRS. CALIFORNIA beauty pageants, annually, and have made a substantial investment in purchasing all rights and interests in the MRS. CALIFORNIA mark from Petitioner's predecessor-in-interest.

MRS. CALIFORNIA for beauty pageants is highly descriptive, if not generic.

4. On February 19, 1999, Petitioners obtained the rights to the domain name MRS. CALIFORNIA.COM believing that the designation "Mrs. California" is generic for beauty pageants for married women. In support of the Petitioner's contention that the term MRS. CALIFORNIA cannot serve as a source identifier for the Registrant, or any other party, Petitioners note that there are numerous national and international "Mrs." beauty pageants that have a California delegate, all of which are commonly referred to as "Mrs. California." These pageants include "Mrs. California Globe," "Mrs. California United States," and "Mrs. California United Nations," among others. In addition, there is widespread use of the similar term MISS CALIFORNIA, MR. CALIFORNIA and even MS. CALIFORNIA which are each, respectively widely used by many third parties in connection with beauty pageants and contests for single women, men and married women and men.
5. On or about June 19, 2000, and prior to the date of the cited registration, Petitioners purchased from their predecessor-in-interest all director's rights to the

Mrs. California International pageant, any and all common law rights to use of the term MRS. CALIFORNIA, and the option rights as a delegate of the MRS. INTERNATIONAL beauty pageant to continue holding annual beauty pageants featuring married women vying for the title of MRS. CALIFORNIA.

6. Petitioners are further aware of substantial third party use of the MRS. CALIFORNIA name, both within and outside of class 41 as related to the subject of "beauty pageants" which includes, for example, the famous theatrical play written in 1985 by Doris Baizley, entitled "Mrs. California," which is copyrighted in several formats, each of which was registered many years before the Registrant adopted such mark. It should be further noted that the play MRS. CALIFORNIA was set by the author in 1955, and is described by the author as "a reality-based story of a beauty pageant for homemakers."

MRS. CALIFORNIA as used by the registrant is deceptive.

7. Registrant should be barred from maintaining a registration for its deceptive mark "MRS. CALIFORNIA" under Lanham Act, Section 2(a). Registrant by its own statement deceptively uses its mark for beauty pageants held locally and nationally. Local pageants, held city or county-wide would be deceptive as the winner could not be crowned MRS. CALIFORNIA. Similarly, it would be highly inappropriate and deceptive for a National beauty pageant to be entitled MRS. CALIFORNIA.

MRS. CALIFORNIA as used by the registrant is deceptively misdescriptive.

8. Registrant should be barred from maintaining a registration for its deceptive mark "MRS. CALIFORNIA" under Lanham Act, Section 2(e)(1), and 2 (e)(3). In light of the argument stated in the preceding paragraph, potential participants in a local, or National beauty pageant would likely be deceived as to the geographical territory by which the winner would be sovereign. Again, inasmuch as it is probable that the participants would believe the misrepresentation and since a Statewide beauty pageant for married women in the State of California must be reserved for the apt and descriptive use of all, such Registration must be cancelled.
9. Registrant's pageants are held in California. "MRS. CALIFORNIA" is not a pageant held locally at the city or county level (e.g. Mrs. Modesto or Mrs. Los Angeles), or nationally. The Registrant's mark "MRS. CALIFORNIA" is geographically deceptive when used on or in connection with the services recited in the registration, namely, "Local, State and National beauty pageants."
10. Registrant could not and did not make a sufficient showing of acquired distinctiveness to permit registration of the mark under Sec. 2(f). The Registrant's mark refers to a genus of services, beauty pageants for married women.

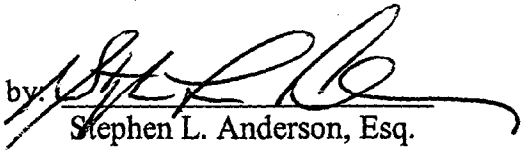
11. Given the extreme weakness of the Registrant's mark, Petitioners' use of their mark MRS. CALIFORNIA prior to Registrant's use of its mark, and the use of such term and closely related terms by third parties, Registrant's showing of secondary meaning would have to be extremely strong.
12. A similar conclusion results with the use of "MISS CALIFORNIA" in connection with beauty pageants for young, single women and "MR." for men's beauty pageants and MS. CALIFORNIA as was in widespread use prior to the date of the Registrant's adoption of the MRS. CALIFORNIA mark.
13. Plainly, "MRS. CALIFORNIA" is so highly descriptive of the services that it is the genus for beauty pageants for married women, and the mark cannot function as a trademark.
14. If Registrant is permitted to retain its registration, despite the Petitioners' prior use and the descriptive and geographically indicative nature of such term, Petitioners may be prevented from using the term "Mrs. California" to promote its beauty pageant for married women in violation of public policy of allowing commonly used terms to be freely available for use.
15. A duplicate copy of this Petition and the fee required in § 2.6(a) (16) for Class 41 is enclosed herein.

WHEREFORE, Petitioner prays that Registration No. 2397364 be cancelled and that this Petition for Cancellation be sustained in favor of Petitioner.

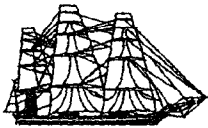
Respectfully submitted,

ANDERSON & SHIPPEY

September 9, 2002

by: 
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September 9, 2002

The Honorable Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

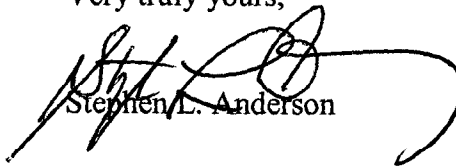
Re: Petition for Cancellation of Registration No. 2,397,364
MRS. CALIFORNIA in Class 41
Our Ref. No.: M 0267

Dear Madam:

Attached hereto are a Petition for Cancellation and one copy of said Petition, and check number 3254 in the amount of \$300 for the filing fee.

If you have any questions, please contact the undersigned.

Very truly yours,


Stephen L. Anderson

Attachments

TRADEMARK TRIAL AND
APPEAL BOARD
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